

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHELLE BEEBE,

Plaintiff,

v.

WILLIAMS COLLEGE,

Defendant.

Civil Action No. 05-30182

FILED
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U.S. DISTRICT COURT
DISTRICT OF MASS.

MOTION TO DISMISS OF DEFENDANT WILLIAMS COLLEGE

Defendant Williams College ("Defendant") moves pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the breach of contract claim asserted against it by Plaintiff Michelle Beebe ("Plaintiff") for failure to state a claim upon which relief may be granted. Additionally, the Complaint must be dismissed to the extent it seeks money damages for Plaintiff's alleged emotional distress since this type of relief is not available under the claim brought.

Plaintiff first claims that Defendant violated the Family Medical Leave Act of 1993, § 101 *et seq.*, 29 U.S.C. § 2611 *et seq.* (2004) ("FMLA" or "Act") by the following alleged actions: (1) refusing to grant Plaintiff leave under the Act for her health condition in July and August 2003; (2) terminating Plaintiff for unscheduled work absences due to this health condition; (3) refusing to grant Plaintiff leave under the Act for the health conditions of her children during the period "before January 1, 2002 until July 2003"; and (4) disciplining Plaintiff for unscheduled work absences she attributes to caring for her children with these ailments. Complaint ("Compl.") ¶¶ 45–50. For the alleged violations numbered (2) and (4) immediately above, Plaintiff seeks money damages for emotional

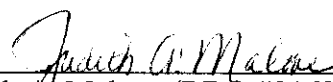
distress. *Id.* at pt. VI. ("Prayers for Relief"), ¶¶ 43, 44. As explained more fully in the accompanying memorandum, this part of her claim for relief must be dismissed since money damages for emotional distress are not available under the FMLA.

Plaintiff next claims that Defendant breached its alleged employment contract with Plaintiff when it failed to provide Plaintiff with family and medical leave in accordance with the policies outlined in its staff handbook. As also explained more fully in the accompanying memorandum, Plaintiff's breach of contract claim must be dismissed in its entirety because it fails to state a claim upon which relief may be granted. The contents of the handbook and the circumstances of its provision make clear that Defendant did not, and never intended to, enter into an employment contract with Plaintiff based upon the policies set out in the handbook.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), an oral argument is hereby requested on this dispositive motion. Defendant believes that oral argument is desirable in order to address any questions raised by the Court and in order to further set forth the reasons why Plaintiff's Complaint fails to state a claim upon which relief can be granted. Defendant estimates that thirty minutes will be necessary for all parties to be heard.

Williams College
By its attorney,

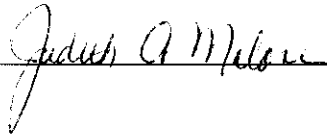


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Dated: November 23, 2005

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party by certified mail on November 23, 2005.

A handwritten signature in cursive script, reading "Judith A. Milner", is written over a horizontal line.